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Attorney for NCO Financial Systems, Inc.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DEON L. THOMAS,	)	Case No. 2:11-CV-04428 AHM (OPx)
Plaintiff,	)	
vs.	)	ANSWER OF NCO FINANCIAL
BLEIER & COX, LLP, NCO FINANCIAL	)	SYSTEMS, INC. TO AMENDED
SYSTEMS, INC., CAPITAL ONE aka	)	COMPLAINT 1
CAPITAL ONE, NATIONAL	)	
ASSOCIATION, CAPITAL ONE	)	
FINANCIAL CORP, CAPITAL ONE BANK	)	
(USA) N.A.,	)	
Defendants.	)	

Defendant, NCO Financial Systems, Inc. (hereinafter "NCO"), for itself alone,  
responds to the Amended Complaint 1 ("Complaint") filed by Plaintiff, Deon L. Thomas  
("Plaintiff"), as follows:

///

1           1.       NCO admits that Plaintiff purports to seek redress for alleged violations of  
2 the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq. ("FCRA") and the Fair Debt  
3 Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, as alleged at p. 1, ll. 22-  
4 23 of the Complaint. Except as expressly admitted herein, NCO denies the remaining  
5 allegations contained therein.  
6

7  
8           2.       NCO lacks sufficient information to answer the allegations at p. 1, ll. 23-24  
9 of the Complaint, and based thereon denies the same.

10                               **JURISDICTION AND VENUE**  
11

12           3.       NCO admits the allegations contained at p. 2, between ll. 1-3 of the  
13 Complaint for jurisdiction purposes only.

14           4.       NCO lacks sufficient information to answer the allegations at p. 2, between  
15 ll. 3-9 of the Complaint, which relate to a party other than NCO, and based thereon  
16 denies the same.  
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18           5.       NCO admits it is headquartered in Horsham, PA and that its agent for  
19 service of process in California is CT Corp. NCO further admits that when it acts as a  
20 furnisher of credit information, it may be subject to the provision of the FCRA. Except  
21 as expressly admitted, NCO denies the remaining allegations contained at p. 2, between  
22 ll. 9-15 of the Complaint. NCO denies any liability or wrongdoing to the extent alleged  
23 therein.  
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1           6.       NCO lacks sufficient information to answer the allegations at p. 2, between  
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3       ll. 15-25 of the Complaint, which relate to a party other than NCO, and based thereon  
4       denies the same.

5           7.       NCO lacks sufficient information to answer the allegations at p. 2, between  
6       ll. 25-27 of the Complaint, and based thereon denies the same.

### 7                               8                               9

### **DEMAND FOR JURY**

9           8.       NCO admits Plaintiff has demanded a jury and seeks punitive damages as  
10       set forth at p. 3, between ll. 1-5 of the Complaint. Except as expressly admitted, NCO  
11       denies the remaining allegations therein. NCO denies Plaintiff is entitled to punitive  
12       damages.  
13

### 14                              15                             16

### **PRELIMINARY STATEMENT**

15           9.       NCO admits Capital One Bank (USA), N.A. placed Plaintiff's account  
16       ending in 4182 with NCO for collection on March 19, 2010. NCO admits that on March  
17       20, 2010, NCO obtained Plaintiff's credit report in connection with the placement of  
18       Plaintiff's account with NCO for collection. NCO further admits Capital One Bank  
19       (USA), N.A. placed Plaintiff's account ending in 5256 with NCO for collection on  
20       November 19, 2010. NCO admits that on November 20, 2010, NCO obtained Plaintiff's  
21       credit report in connection with the placement of Plaintiff's account with NCO for  
22       collection. NCO denies it reported either of these accounts to any consumer credit  
23       reporting agency. Except as expressly admitted, NCO denies the remaining allegations  
24       contained at p. 3, between ll. 6-18 of the Complaint.  
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## **INTRODUCTION**

10. NCO admits it obtained Plaintiff's credit report in connection with collection of Plaintiff's Capital One Bank (USA), N.A. accounts as set forth in ¶ 9. Except as expressly admitted, NCO denies the remaining allegations contained at p. 3, between ll. 19-26 of the Complaint.

11. NCO lacks sufficient information to answer the allegations at p. 4, between ll. 1-12 of the Complaint, which relate to a party other than NCO, and based thereon denies the same.

12. NCO admits Capital One Bank (USA), N.A. placed Plaintiff's account ending in 5256 with NCO for collection on November 19, 2010. NCO further admits it sent Plaintiff an initial collection notice relating to the account on November 23, 2010. NCO further admits it received Plaintiff's letter requesting validation on or about November 30, 2010 and NCO requested validation of the debt from Capital One on or about December 1, 2010. NCO undertook no further collection efforts relating to the account. Capital One recalled the account on or about December 6, 2010. NCO admits that on November 20, 2010, it obtained Plaintiff's credit report in connection with the placement of Plaintiff's Capital One account with NCO for collection. NCO denies it reported the account to any consumer credit reporting agency. Except as expressly admitted, NCO denies the remaining allegations contained at p. 4, between ll. 12-27 of the Complaint.

1           13. NCO lacks sufficient information to answer the allegations at p. 5, between  
2  
3           ll. 1-12 of the Complaint, which relate to a party other than NCO, and based thereon  
4           denies the same.

5           14. NCO lacks sufficient information to answer the allegations at p. 5, between  
6  
7           ll. 13-27 of the Complaint, which relate to parties other than NCO, and based thereon  
8           denies the same.

9           15. NCO admits it received Plaintiff's notice of pending lawsuit on or about  
10           May 16, 2011. Except as expressly admitted, NCO denies the remaining allegations  
11           contained at p. 5, l. 27 to p. 6, l. 5 of the Complaint.  
12

13                           **Count I against the Defendant Under DCPA**

14           16. NCO lacks sufficient information to answer Count I, p. 6, l. 6 to p. 7, l. 10,  
15           which is alleged against a party other than NCO, and based thereon denies the allegations  
16           contained therein.  
17

18                           **Count II against the Defendant Under FCRA**

19           17. NCO lacks sufficient information to answer Count II, p. 7, l. 11 to p. 8, l.  
20           10, which is alleged against a party other than NCO, and based thereon denies the  
21           allegations contained therein.  
22

23                           **Count III against the Defendant Under FCRA**

24           18. NCO lacks sufficient information to answer Count III, p. 8, l. 10 to p. 9, l.  
25           9, which is alleged against a party other than NCO, and based thereon denies the  
26           allegations contained therein.  
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**Count IV against the Defendant Under FCRA**

19. NCO lacks sufficient information to answer Count IV, p. 9, l. 10 to p. 10, l. 2, which is alleged against a party other than NCO, and based thereon denies the allegations contained therein.

**Count I against the Co-Defendant Under DCPA**

20. NCO admits Capital One Bank (USA), N.A. placed Plaintiff's account ending in 5256 with NCO for collection on November 19, 2010. NCO admits it received Plaintiff's letter requesting validation on or about November 30, 2010. NCO undertook no further collection efforts relating to the account after receipt of Plaintiff's letter. NCO requested validation of the debt from Capital One on or about December 1, 2010. Capital One recalled the account on or about December 6, 2010. NCO avers the statutes cited in Count I, at p. 10, l. 8 to p. 11, l. 5, speak for themselves and refers all matters of law to the Court. Except as expressly admitted, NCO denies the remaining allegations contained in Count I, at p. 10, l. 3 to p. 11, l. 8.

**Count II against the Co-Defendant Under DCPA**

21. NCO admits Capital One Bank (USA), N.A. placed Plaintiff's account ending in 5256 with NCO for collection on November 19, 2010. NCO admits it received Plaintiff's letter requesting validation on or about November 30, 2010. NCO undertook no further collection efforts relating to the account after receipt of Plaintiff's letter. NCO requested validation of the debt from Capital One on or about December 1, 2010. Capital One recalled the account on or about December 6, 2010. NCO avers the statutes cited in

Count II, at p. 11, l. 14 to p. 12, l. 11, speak for themselves and refers all matters of law to the Court. Except as expressly admitted, NCO denies the remaining allegations contained in Count II, at p. 11, l. 8 to p. 12, l. 12.

### **Count III against the Co-Defendant Under FCRA**

22. NCO admits it obtained Plaintiff's credit report in connection with collection of Plaintiff's Capital One Bank (USA), N.A. accounts as set forth in ¶ 9. NCO further admits it received Plaintiff's letter requesting validation on or about November 30, 2010. NCO undertook no further collection efforts relating to the account after receipt of Plaintiff's letter. NCO avers the statutes cited in Count III, at p. 12, l. 23 to p. 13, l. 8, speak for themselves and refers all matters of law to the Court. Except as expressly admitted, NCO denies the remaining allegations contained in Count III, at p. 12, l. 13 to p. 13, l. 12.

### **Count IV against the Co-Defendant Under FCRA**

23. NCO admits it obtained Plaintiff's credit report in connection with collection of Plaintiff's Capital One Bank (USA), N.A. accounts as set forth in ¶ 9. NCO further admits it received Plaintiff's letter requesting validation on or about November 30, 2010. NCO undertook no further collection efforts relating to the account after receipt of Plaintiff's letter. NCO avers the statutes cited in Count IV, at p. 13, l. 19 to p. 14, l. 9, speak for themselves and refers all matters of law to the Court. Except as expressly admitted, NCO denies the remaining allegations contained in Count IV, at p. 13, l. 13 to p. 14, l. 13.

1                                    **Count V against the Co-Defendant Under FCRA**

2            24.    NCO admits it obtained Plaintiff's credit report in connection with  
3  
4 collection of Plaintiff's Capital One Bank (USA), N.A. accounts as set forth in ¶ 9.  
5 NCO further admits it received Plaintiff's letter requesting validation on or about  
6 November 30, 2010. NCO undertook no further collection efforts relating to the account  
7 after receipt of Plaintiff's letter. NCO avers the statute cited in Count V, at p. 14, ll. 19-  
8 27, speaks for itself and refers all matters of law to the Court. Except as expressly  
9 admitted, NCO denies the remaining allegations contained in Count V, at p. 14, l. 14 to p.  
10 15, l. 4.  
11

12                                    **Count I against the Co-Defendant Under FCRA**

13            25.    NCO lacks sufficient information to answer Count I, p. 15, l. 5 to p. 16, l.  
14 17, which is alleged against a party other than NCO, and based thereon denies the  
15 allegations contained therein.  
16  
17

18                                    **Count II against the Co-Defendant Under FCRA**

19            26.    NCO lacks sufficient information to answer Count II, p. 16, l. 18 to p. 18,  
20 l. 5, which is alleged against a party other than NCO, and based thereon denies the  
21 allegations contained therein.  
22

23                                    **Count III against the Co-Defendant Under FCRA**

24            27.    NCO lacks sufficient information to answer Count III, p. 18, l. 6 to p. 19, l.  
25 10, which is alleged against a party other than NCO, and based thereon denies the  
26 allegations contained therein.  
27  
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1                                    **Count IV against the Co-Defendant Under FCRA**

2            28.    NCO lacks sufficient information to answer Count IV, p. 19, l. 11 to p. 20,  
3  
4 l. 9, which is alleged against a party other than NCO, and based thereon denies the  
5 allegations contained therein.

6                                    **Summation**

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8            29.    In response to the allegations set forth at p. 20, ll. 11-28, NCO incorporates  
9 by reference as though set forth in full its responses contained in the preceding  
10 paragraphs. Except as expressly admitted, NCO denies the allegations at p. 20, ll. 11-28  
11 of the Complaint.

12  
13           30.    NCO admits that Plaintiff purports to seek redress for alleged violations of  
14 the FCRA and FDCPA, as alleged at p. 21, ll. 1-6 of the Complaint, but denies violating  
15 the FCRA or the FDCPA and denies any Plaintiff is entitled to the requested relief.  
16

17                                    **AFFIRMATIVE DEFENSES**

18                                    **FIRST AFFIRMATIVE DEFENSE**

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20           As a first affirmative defense, NCO alleges plaintiff's Complaint should be  
21 dismissed because the various causes of action fail to state claims upon which relief can  
22 be granted.

23                                    **SECOND AFFIRMATIVE DEFENSE**

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25           As a second affirmative defense, NCO alleges, pursuant to 15 U.S.C. § 1692k(c),  
26 to the extent that a violation(s) is established, any such violation(s) was not intentional  
27  
28

1 and resulted from a bona fide error notwithstanding maintenance of procedures  
 2 reasonably adapted to avoid any such error.

### 3 4 **THIRD AFFIRMATIVE DEFENSE**

5 As a third affirmative defense, NCO alleges it had a permissible purpose to obtain  
 6 Plaintiff's credit report in connection with the collection of a debt. 15 U.S.C. §  
 7  
 8 1681b(a)(3)(A).

### 9 **FOURTH AFFIRMATIVE DEFENSE**

10 As a fourth affirmative defense, NCO alleges, Plaintiff consented to and/or invited  
 11 the conduct for which he seeks relief.

### 12 13 **FIFTH AFFIRMATIVE DEFENSE**

14 As a fifth affirmative defense, NCO alleges, Plaintiff knowingly and voluntarily  
 15 waived his rights to obtain any or all of the relief sought in the complaint.

### 16 17 **SIXTH AFFIRMATIVE DEFENSE**

18 NCO currently has insufficient information upon which to form a belief as to  
 19 whether it has additional affirmative defenses available. NCO reserves its right to assert  
 20 additional affirmative defenses in the event investigation and discovery indicate they  
 21 would be appropriate.

22  
23 WHEREFORE, NCO respectfully requests that:

- 24 1. Plaintiff take nothing by way of his Complaint;
- 25 2. Judgment of dismissal be entered in favor of NCO;
- 26
- 27
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1           3.     NCO be awarded costs and attorney's fees it has incurred in defending this  
2                 lawsuit.

3  
4           4.     NCO be granted such other and further relief as the Court deems just and  
5                 proper.

6     Dated: 6/23/11

SESSIONS, FISHMAN, NATHAN & ISRAEL, L.L.P.

7                 /s/ Debbie P. Kirkpatrick

8                 Debbie P. Kirkpatrick

9                 Attorney for Defendant

10                NCO Financial Systems, Inc.